

the mucus and the reduction of the inflammation of the respiratory ducts. Anacahuita Pectoral can be safely recommended * * * it is beneficial in any stage of the ailment, * * * In the Chronic Bronchitis of the aged, or of persons addicted to intemperance, when accompanied by a cough and habitual * * * copious expectoration, loss of strength, purulent sputa, cough more severe at night and hectic nightsweats, Anacahuita Pectoral should be taken. Whooping-cough or Convulsive-cough. * * * may be relieved if timely use is made * * * Asthma. * * * should * * * be taken * * * Pleurisy. * * * free use being made of Anacahuita Pectoral * * * Croup.—This disease, which is marked by the inflammation of the upper part of the throat, and the growth of a false membrane which completely closes the passage, so that the patient dies from suffocation may be avoided if on the appearance of the first symptoms an emetic is given and Anacahuita Pectoral administered freely. The hectic fever which usually accompanies bronchial and pulmonary affections may be arrested by taking Anacahuita Pectoral * * * Difficult respiration. All pulmonary complaints or those which affect the lungs are liable to present this distressing symptom. Relieve the trouble and remove the cause. Try Kemp's Anacahuita Pectoral Compound."

Analyses of samples of the articles by the Bureau of Chemistry of this department showed that the pectoral compound consisted essentially of small amounts of vegetable extractives, magnesium and ammonium salts, approximately 25 per cent of sugars, 25 per cent of alcohol, and water; and that the sarsaparilla compound consisted essentially of one-third per cent of potassium iodid, small amounts of extractives of vegetable drugs, including a laxative drug, traces of volatile oils, 15 per cent of sugar, 11 per cent of alcohol, and water.

Misbranding of the articles was alleged in substance in the libels for the reason that the above-quoted statements appearing in the labeling thereof were false and fraudulent, since the said articles contained no ingredients or combinations of ingredients capable of producing the curative and therapeutic effects claimed. Misbranding of the Kemp's Anacahuita pectoral compound was alleged for the further reason that the statement on the label, to wit, "Alcohol, 34 per cent * * *," was false and misleading, and for the further reason that the package failed to bear a statement on the label of the quantity or proportion of alcohol contained therein, since the statement on the said label was incorrect.

On September 17, 1921, J. Lawrence, Jr., having entered an appearance as claimant and having consented to the entry of decrees, judgments of condemnation and forfeiture were entered, and it was ordered by the court that the products be released to the said claimant upon payment of the costs of the proceedings and the execution of bonds in the aggregate sum of \$500, conditioned in part that they be relabeled in accordance with the requirements and directions of this department.

C. W. PUGSLEY, *Acting Secretary of Agriculture.*

10395. Adulteration of oysters. U. S. * * * v. Golden & Co., a Corporation. Tried to the court and a jury. Verdict of guilty. Fine, \$50: (F. & D. No. 15002. I. S. No. 8817-t.)

On or about January 12, 1922, the United States attorney for the District of Columbia, acting upon a report by the Secretary of Agriculture, filed in the Police Court of the District aforesaid an information against Golden & Co., a corporation, Washington, D. C., alleging that on January 18, 1921, the said company did offer for sale and sell in the District of Columbia, in violation of the Food and Drugs Act, a quantity of oysters which were adulterated.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that it contained added water.

Adulteration of the article was alleged in the information for the reason that a substance, to wit, water, had been mixed and packed therewith so as to lower and reduce and injuriously affect its quality and had been substituted in part for oysters, which the said article purported to be. Adulteration was alleged for the further reason that a valuable constituent of the article, to wit, oyster solids, had been in part abstracted.

On January 12, 1922, the case having come on for trial before the court and a jury, after the submission of evidence and arguments by counsel, the court delivered the following charge to the jury (Hardison, J.):

Gentlemen of the jury: If you believe from this evidence to the exclusion of a reasonable doubt that the defendant, Golden & Co., on the 18th day of January, 1921, within the District of Columbia, did sell to one Robert W. Thompson a certain article of food, to wit, oysters, which said article of food was adulterated, in that a substance, to wit, water, had been mixed and packed with the article so as to lower and reduce and injuriously affect its quality, you should find the defendant guilty as charged. Unless you so believe, you should find the defendant not guilty. The defendant is presumed to be innocent until proven guilty to the exclusion of doubt, and that presumption of innocence accompanies him throughout the trial until overcome by proof satisfactory to you that he is guilty. A reasonable doubt, gentlemen, is a doubt that would influence an ordinary prudent man in some action, and a reasonable doubt is nothing but a doubt, and a reasonable doubt does not allow you to go out and conjecture any more than the law requires you to convict the defendant without evidence that satisfies you of his guilt.

The first proposition to be established by the Government before it can expect a verdict at your hands is that a sale has been made by Golden & Co. The law is that when a man or a corporation does something through another it is responsible for what is done by its agent. If the defendant had an authorized agent out selling this product and he did sell it, it would be its act. The sale by the agent would be the sale by the company.

Now, it is alleged that this commodity was adulterated, and it is alleged here in the information that it was adulterated in several ways. I will read the information. [The court here read the information.] The gist of the offense is, gentlemen, the adulteration of the article, the selling after it had been adulterated, and if it was adulterated in any one of these ways, that would be adulteration. The act here with reference to adulteration provides that adulteration shall consist, first, if a given substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality and strength. That constitutes adulteration. It is not necessary for any individual oyster to be excepted. Each individual oyster might have all of its qualities and properties and virtues in it, although a great quantity of water had been put in a can, a container of oysters; but [if] after taking the given quantity of oysters water had been added to that bulk so as to dilute or make a greater quantity out of it and then sold for a greater quantity, that oyster or those oysters have been adulterated, and that constitutes adulteration. Or if you find that these were adulterated by the addition of any substance that would lower, reduce, or injuriously affect its quality or strength, that would constitute adulteration; or if any substance had been substituted wholly or in part for the article, that would constitute adulteration. Third: If any valuable constituent of the article had been wholly extracted or partly extracted. Fourth: If they had been colored or mixed with something that would color them. Of course, there is no evidence here tending to show any adulteration in that fourth manner, nor is there any evidence here showing adulteration in the third manner, because there is no contention here on the part of the Government, or any proof, to show that any particular oyster was injured or any properties or qualities had been extracted from it.

The theory of the Government and the proof is that there was an abnormally large quantity of water, a quantity materially in excess of what is ordinary in the run of the business; that is, the packing of oysters in the trade, in this section. It is that an abnormal quantity of liquid existed in this commodity. If that is true then that would constitute adulteration. It would not be anything more than right, I think, to make an allowance for a slight variation because you could not expect every can of oysters to have exactly the same quantity of liquid. You might make some allowance for a slight variation there.

Now, it is not necessary here for the Government to establish its case to show that Golden & Co. had—that Golden & Co. put this water in these oysters. It is not necessary if any water was put in. It is not necessary to show that Golden & Co. had any knowledge that water was put in if any water was put in. Because this law, whether wisely or not—it is not within our province to determine—has required that when a dealer furnishes food products to the public it is up to him to know what they contain and he can not hide behind ignorance, he can not say “I did not know” the stuff was adulterated. He must know. And it is immaterial whether he put the water in, if any was put in. It is immaterial whether the company put it in or whether the company

was a party to it or not, or whether the company knew it had been done, if it had in fact been done. Any excessive quantity of water, if it had been packed in these oysters, whether Golden & Co. had any knowledge of it or not, and they sold them in that condition, why then that would constitute the offense that is prescribed in this law.

So the case in its last analysis comes down to the proposition whether or not when these oysters were packed, an excessive quantity over and above what was in the run of the business, in the trade here in this section, was put in these oysters at that time. If that was done, whether Golden & Co. knew of it or not, if they handled an oyster in that condition, in which that had been done, then they would be guilty under this law.

I do not know that I could be of any assistance in reviewing the testimony. You heard it and paid careful attention to it. You heard the testimony here of the Government's witness as to the conduct of the employees and as to the taking of the samples. Of course, it is immaterial how big a bulk of oysters was taken, whether a can of oysters containing a gallon, or not, if an excessive amount of water was found in the sample. It is immaterial whether that was found at the bottom or the top of the can; if an excessive amount of water was in the can either at the top or bottom; that would constitute an adulteration of the oysters.

The question to consider is whether or not when the agent took the sample he got a fair sample of it. It might be if there was any more than a normal quantity of water, more than 6 per cent, that greater part was at the top of the can, for it has been shown by demonstration that the water comes to the top of the can. It might be that the sample was taken off the top and when the water had settled there, and that perhaps would not be truly representative of the quantity of liquid in the can, whereas if it had been stirred up before it would not show that excessive quantity. So it is proper for you to consider that in your deliberations. I do not mean to intimate by that that the proof shows that the agent was negligent in taking the sample. I simply mean to call attention to the fact in determining if he got a fair and representative sample, as fair a sample as this can could supply.

It is not necessary for me to say that this defendant stands here like any other defendant. The fact that it is a corporation and handles food products does not put it in a position different from any one else, and you ought not to be influenced by the high cost of living or any other consideration. This thing of adulterating food is, of course, a thing that ought not to go on, and wherever guilt is shown you should not hesitate to bring in a verdict of guilt, but still you ought not to be carried away by any hue and cry about the high cost of living, or a large corporation being engaged in the business, or anything like that. But you must go to the actual question, and the question to be determined is, Has this defendant committed this offense? If you are satisfied that he has, you must bring in a verdict against him, but you must be satisfied beyond all reasonable doubt. You should not let the high cost of living influence you. You ought to simply follow the straight edge of reason and logic in this case and decide the case on the evidence and the facts.

The jury then retired and after due deliberation returned a verdict of guilty, and, on February 23, 1922, the court imposed a fine of \$50.

C. W. PUGSLEY, *Acting Secretary of Agriculture.*

10396. Misbranding of olive oil and compound oil. U. S. * * * v. 25 Gallon Cans and 55 Quart Cans of Olive Oil and 10 Gallon Cans of Compound Oil. Consent decrees of condemnation and forfeiture. Products released under bond. (F. & D. Nos. 15462, 15530. I. S. Nos. 15481-t, 15482-t, 15483-t. S. Nos. E-3603, E-3604.)

On October 7 and 10, 1921, respectively, the United States attorney for the District of Connecticut, acting upon reports by the Secretary of Agriculture, filed in the District Court of the United States for said district libels for the seizure and condemnation of 25 gallon cans and 55 quart cans of olive oil and 10 gallon cans of compound oil, remaining unsold in the original unbroken packages at Bridgeport, Conn., alleging that the articles had been shipped by the Reliable Importing Co., New York, N. Y., on or about August 2 and September 9, 1921, respectively, and transported from the State of New York into the State of Connecticut, and charging misbranding in violation of the Food and Drugs Act, as amended. The articles were labeled in part, respectively: "Olio D'Oliiva Puro Importato * * * Lucca Italia Vapore-Marina Brand Net Contents 1 Gal." (or "1 Quart") "* * * Sirota & Segerman, Importers &